

501 KAR 3:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 13B, 441

STATUTORY AUTHORITY: KRS 13B.170, 441.075

NECESSITY, FUNCTION, AND CONFORMITY: The Commissioner of the Department of Corrections is authorized by KRS 441.075(4) to hear matters covered by the order of the department requesting county jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Day" means a calendar day.

(2) "Hearing officer" means a hearing officer appointed by the commissioner pursuant to KRS 441.075.

(3) "Order" means the order of the commissioner requiring the petitioner or petitioners to comply with the minimum jail standards for local jails as specified in the order.

(4) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.

(5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(6) "Standards" means the minimum jail standards for local jails as established by the department in 501 KAR Chapters 3, 7, and 13.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.075(4), cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification or repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS 441.075(4), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the county jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the commissioner or his designee on the matters covered by the order to the Commissioner of the Department of Corrections, P.O. Box 2400, Frankfort, Kentucky 40602-2400. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and interveners and all proof shall be presented at the hearing. Additional evidence shall not be permitted after the hearing except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing shall be deemed effective when mailed.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation shall govern all proceedings before the department and its hearing of-

ficers.

(2) In the absence of a specific provision, procedure shall be in accordance with KRS Chapter 13B and the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. If service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by this administrative regulation for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and interveners within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. A hearing shall not be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall comply with KRS 13B.050(3).

Section 6. Continuance of Hearing. (1) Continuance of a hearing shall not be allowed except in the case of an extreme emergency or in usual circumstances.

(2) A request for a continuance shall be provided to the department at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons for the continuance.

(3) The hearing officer may consider a request for an extension during the hearing, if extenuating circumstances:

(a) Arise during the hearing; or

(b) Prevented compliance with the timing provisions of subsection (2) of this section.

(4) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional continuance shall not be granted without approval of the commissioner.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse a failure to appear. If the failure to appear is excused, the hearing shall be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, if there exist common parties, common questions of law or fact, or both, or in other appropriate circumstances.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervener, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that

the intervention will not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to the extent and upon the terms as the commissioner or the hearing officer determines.

(4) The caption of all cases where intervention is allowed shall reflect the intervention by adding to the caption after the name of the respondent the name of the intervener, followed by the designation "intervener."

Section 11. Service. (1) If filing pleadings or other documents, the filing party or intervenor shall serve a copy on every other party or intervener.

(2) Service upon a party or intervener who has appeared through a representative shall be made only upon the representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service shall be deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of service which sets forth the date and manner of service. The statement shall be filed with the pleading or document.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervener upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to this administrative regulation when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on his or her own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings, or for any other matter in accordance with KRS 13B.070(1).

(2) The commissioner or the hearing officer may issue a prehearing order in accordance with KRS 13B.070(2). The order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within a shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with this administrative regulation and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, interveners, or witnesses, and interrogatories directed to parties, interveners, or witnesses shall not be allowed.

(2) If the commissioner or the hearing officer grants an application to conduct discovery depositions or interrogatories, the order shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervener fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of this administrative regulation, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, ensure that the facts are fully elicited, adjudicate all issues, and avoid delay. The hearing officer, in cases assigned to him, between the time he is designated and the time he issues his decision, subject to the administrative regulations of the department, may:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (4) Hold conferences for the settlement or simplification of the issues;
- (5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated;
- (6) Examine witnesses and to introduce into the record documentary or other evidence;
- (7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; and
- (8) Adjourn the hearing as the needs of justice and good administration require.

Section 21 Exhibits. (1) All exhibits offered in evidence shall be marked with a designation identifying the party or intervener by whom the exhibit is offered.

(2) In the absence of objection by another party or intervener, exhibits shall be numbered and admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and interveners.

(4) All exhibits offered, but denied admission into evidence, shall be identified as required by subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 22. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall not be deemed waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an of-

fer of proof, which shall be included in the record of the proceeding.

Section 23. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him in accordance with KRS 13B.110.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order in accordance with KRS 13B.110(4).

(3) The commissioner shall issue a final order in accordance with KRS 13B.120. (9 Ky.R. 1270; eff. 6-1-83; Am. 12 Ky.R. 1609; eff. 5-6-86; 13 Ky.R. 696; eff. 11-11-86; 19 Ky.R. 1857; 2625; eff. 6-7-93; 37 Ky.R. 2966; 38 Ky.R. 580; eff. 10-7-11.)